

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT made this _____ day of _____, 20__, by **[NAME OF GRANTING LANDOWNER]** (Grantor) in favor of **[NAME OF GRANTEE]** (Grantee or Holder), with the United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (“USACE”), as Third-Party Beneficiaries with rights as provided in this Conservation Easement, pursuant to Pennsylvania Statutes, Title 32, §§ 5051-5059 and Pennsylvania common law;

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of certain tracts of land located in _____, and being **[USE IF APPLICABLE: a portion of]** the property conveyed to the Grantor by deed recorded in deed book **[insert LIBER FOLIO reference]** in the land records of _____ County, Pennsylvania, more particularly described in Exhibit(s) attached hereto and incorporated by reference, hereinafter referred to as the “Property”; and

[**NOTE TO GRANTOR: The Grantor shall prepare and attach a legal description (i.e. metes and bounds) of the Property, and if less than the whole property, also include a separate, clearly identifiable, legal description of the Conservation Area(s), all in an exhibit identified as an Exhibit A and entitled “Conservation Area Boundaries”. In addition, the Grantor will include an Exhibit B that shall be a scaled drawing of the Area subject to the Easement, and entitled “Conservation Area Boundary Map”. The restricted Area(s) shall be clearly labeled on the plan(s) as “Conservation Area and be clearly identified by cross-hatching and/or shading/coloring. The Grantor shall also include, on the drawing, the location and extent of all known, pre-existing easements, rights of ways, utilities, drainage ditches, stormwater facilities, cattle crossings, and structures. For each such item that involves on-going or periodic operation and maintenance, a description of all anticipated and authorized maintenance work and the work boundaries for each item shall also be included on the exhibits and attachments, if necessary, and in Section 9. RESERVED RIGHTS. If legible and clearly depicted, the legal description(s) and drawing(s) can be included on one exhibit. If there is a Department of the Army authorization associated with this easement, it must be attached to the easement for recordation.]

WHEREAS, that certain portion of the surface of the Property described on Exhibits A and B attached hereto (the “Conservation Area”) possesses natural, scenic, or open space values (collectively, “Conservation Values”) of great importance to Grantor, the people of **[COUNTY]**, and the people of the Pennsylvania; and

WHEREAS, Grantee qualifies as a “holder” under the Pennsylvania Conservation and Preservation Easements Act, Pennsylvania Statutes, Title 32, § 5053; and

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WHEREAS, the Grantor has agreed to make the Conservation Area(s) subject to the conservation-based covenants described in this Conservation Easement ***[IF THERE IS A PERMIT ASSOCIATED WITH THIS EASEMENT, USE THE FOLLOWING LANGUAGE: as a condition of the attached Department of the Army Permit or verification letter issued for the [INSERT PROJECT NAME USED FOR PERMIT APPLICATION HERE AND USACE PERMIT NUMBER IF AVAILABLE]; and***

WHEREAS, preservation of the Conservation Area is consistent with a central objective of the Consent Decree in the matter of ***[CASE NAME]***, Civil Action No. _____ (“CALLC CD”), Grantor and Grantee agree that EPA, USACE, and their successor agencies (collectively “Third Parties”), are third-party beneficiaries under this conservation easement, except that nothing herein creates a property interest in the Federal Government or the Commonwealth of Pennsylvania with regard to the Conservation Area;

WHEREAS, the Grantor and Grantee agree to the creation of these conservation-based covenants and intend that the Conservation Area(s) shall be preserved and maintained in a natural condition in perpetuity;

NOW, THEREFORE, in consideration of the mutually-held interests in preservation of the environment, as well as the terms, conditions, and restrictions contained herein, and pursuant to the laws of the Commonwealth of Pennsylvania, Grantor does agree to the following terms and conditions:

1. PURPOSE

The purposes of this Conservation Easement are:

A. To preserve and protect the native flora, fauna, soils, water table and drainage patterns, and other conservation values of the Conservation Area; to view the Conservation Area in its scenic and open condition; and in general, to assure that the Conservation Area, including its air space and subsurface, will be retained in perpetuity in its natural condition as provided herein and to prevent any use of the Conservation Area that will impair or interfere with its natural resource functions and values. Grantor intends that this Conservation Easement will confine the use of the Conservation Area to such activities as are consistent with the purpose of this Conservation Easement.

B. To allow the Grantor, Grantee, EPA, USACE, and PADEP the right to enter upon the Property to inspect the Conservation Area at reasonable times to monitor compliance with and otherwise enforce the terms of this Conservation Easement; provided that, except in cases where Grantor, Grantee, EPA, USACE, or PADEP determine that immediate entry is necessary to prevent, terminate, or mitigate a violation of this Conservation Easement; such entry shall, when practicable, be upon reasonable prior notice to Grantor or any successor or assign, and Grantor, Grantee, EPA, USACE, and PADEP shall not unreasonably interfere with the Grantor’s, or its successor’s or assign’s use and quiet enjoyment of the Property in accordance with the terms of this

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Conservation Easement;

C. To allow the Grantor, Grantee, and Third Parties to enforce the terms of this Conservation Easement by appropriate legal proceedings in accordance with Pennsylvania Statutes, Title 32 §§ 5051-5059 and Pennsylvania common law, so as to prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement and to require the restoration of such areas or features of the Conservation Area that may be damaged by any inconsistent activity or use; and

D. To allow the Grantor, the Grantee, and their authorized representatives, to enter upon the Property and its Conservation Area at reasonable times, upon prior notice to the property owner; and upon prior notice and written approval by the Third Parties, to take any appropriate environmental or conservation management measures consistent with the terms and purposes of this Conservation Easement, including:

- 1) Planting of regionally native vegetation (i.e. trees, shrubs, grasses and forbs); or
- 2) Restoring, altering or maintaining: the topography; hydrology; drainage; structural integrity; streambed; water quantity; water quality; any relevant feature of any stream, wetland, water body, or vegetative buffer within the Conservation Area.

2. DURATION

This Conservation Easement shall remain in effect in perpetuity, shall run with the land regardless of ownership or use, and is binding upon all subsequent declarants, their heirs, executors, administrators, successors, representatives, devisees, and assigns, as the case may be, as long as said party shall have any interest in any part of the Conservation Area. This Conservation Easement is intended to survive foreclosure, bankruptcy, condemnation, or judgments affecting the Property.

3. PERMITTED USES

This Conservation Easement will not prevent the Grantor, subsequent property owner(s), or the personal representatives, heirs, successors, and assigns of either the Grantor or subsequent property owner from making use of the Conservation Area that is not expressly prohibited herein and are not inconsistent with the purposes of this Conservation Easement.

4. RESTRICTIONS

Any activity in or use of the Conservation Area inconsistent with the purpose of the Conservation Easement by the Grantor; subsequent property owner(s); and the personal representatives, heirs, successors, and assigns of either the Grantor or subsequent property owner, is prohibited. Without limiting the generality of the foregoing, and except (1) when an approved purpose under 1.D above, (2) to the extent necessary to turn the Conservation Area to a use consistent with its use prior to Chesapeake Appalachia, LLC's (CALLC's) initial entry onto the Conservation Area (and then only in compliance with any permits or authorizations that may be required), or (3) as necessary to

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accomplish restoration under a restoration plan approved by the Third Parties, the following activities and uses are expressly prohibited in, on, over, or under the Conservation Area(s), subject to all of the express terms and conditions below:

- A. **Structures.** The construction of man-made structures including, but not limited to the construction, removal, placement, preservation, maintenance, alteration, or decoration of any buildings, roads, utility lines, billboards, or other advertising. This restriction does not include deer stands, bat boxes, bird nesting boxes, bird feeders, duck blinds, and the placement of signs for safety purposes or boundary demarcation;
- B. **Demolition.** The demolition of fencing structures constructed for the purpose of demarcation of the Conservation Area(s) or for public safety;
- C. **Soils.** The removal, excavation, disturbance, or dredging of soil, sand, peat, gravel, or aggregate material of any kind; or any change in the topography of the land, including any discharges of dredged or fill material, ditching, extraction, drilling, driving of piles, mining, or excavation of any kind;
- D. **Drainage.** The drainage or disturbance of the water level or the water table, except for pre-existing or approved project-related stormwater discharges and any maintenance associated with those stormwater discharges. All pre-existing or approved project-related drainage/stormwater discharge features should be shown on the accompanying plat map or approved plan and attached to this Conservation Easement;
- E. **Waste or Debris.** The storage, dumping, depositing, abandoning, discharging, or releasing of any gaseous, liquid, solid, or hazardous waste substance, yard waste, materials or debris of whatever nature on, in, over, or underground or into surface or ground water, except for pre-existing or approved project-related stormwater discharges and any maintenance associated with those stormwater discharges;
- F. **Non-Native Species.** The planting or introduction of non-native species;
- G. **Herbicides, Insecticides and Pesticides.** The use of herbicides, insecticides, or pesticides, or other chemicals, except as may be necessary to control invasive species that threaten the natural character of the Conservation Area(s). State-approved municipal application programs necessary to protect the public health and welfare are not included in this prohibition;
- H. **Removal of Vegetation.** The mowing, cutting, pruning, or removal of any kind; disturbance, destruction, or the collection of any trees, shrubs, or other vegetation, except for pruning, cutting or removal for:
 - 1) safety purposes; or
 - 2) control in accordance with accepted scientific forestry management

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- practices for diseased or dead vegetation; or
 - 3) control of non-native species and noxious weeds; or
 - 4) scientific or nature study;
- I. **Agricultural Activities.** Except to the extent necessary to return the Conservation Area to a use consistent with its use prior to CALLC's initial entry onto the Conservation Area (and then only in compliance with any permits or authorizations that may be required), conversion of, or expansion into, any portion of the Conservation Area(s) for use of agricultural, horticultural, aquaculture, silviculture, livestock production or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g., from agriculture to silviculture). ***[NOTE: THE FOLLOWING LANGUAGE SHOULD BE ADDED, AS APPROPRIATE FOR PROJECTS IN DESIGNATED BOG TURTLE COUNTIES: USACE-approved management practices, including the introduction of livestock, for the purpose of maintaining bog turtle habitat, are not included in this prohibition.];***
- J. **Off-road Vehicles.** Recreational use of ATVs, dirt bikes, motorcycles, off-road vehicles, or motor vehicle of any kind is prohibited in the "Conservation Area(s)".
- K. **Other:** Other acts, uses, excavation, or discharges which adversely affect fish or wildlife habitat or the preservation of lands, waterways, or other aquatic resources within the Conservation Area(s);

5. INSPECTION, ENFORCEMENT AND ACCESS RIGHTS

EPA, USACE, and/or the PADEP, and its/their authorized representatives shall have the right to enter and go upon the Property, to inspect the Conservation Area(s) and take actions necessary to verify compliance with this Conservation Easement. When practicable, such entry shall be upon prior reasonable notice to the property owner. The Grantor grants to EPA, USACE, the U.S. Department of Justice a discretionary right to enforce this Conservation Easement in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants: provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. Nothing herein shall limit the right of the USACE or PADEP to modify, suspend, or revoke any permit.

6. MONITORING AND MAINTENANCE

CALLC and its authorized agents shall have the right to enter and go upon the lands of the Grantor to monitor and manage the Conservation Area to ensure compliance with the restoration plan approved in connection with the CALLC CD. This may include, but is not limited to, completing annual monitoring, controlling invasive species, planting native vegetation, repairing signs/fences, and repairing erosion.

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7. RECORDING AND EXECUTION BY PARTIES

The Grantor agrees to record this Conservation Easement in the Land Records of the county or counties where the Property is located within sixty (60) days of the effective date of this Conservation Easement. Grantor shall and provide the Third Parties with proof of recordation within thirty (30) days of recording.

8. NOTICE OF TRANSFER OF PROPERTY INTERESTS

No transfer of the rights of this Conservation Easement, or of any other property interests pertaining to the Conservation Area(s) or the underlying Property it occupies shall occur without sixty (60) calendar days' prior written notice to EPA, USACE, and PADEP.

9. MODIFICATIONS

Notwithstanding anything contained herein to the contrary, except for de minimis modifications (defined below), any modification or termination of this Conservation Easement shall require the prior written approval of Grantee, its successors or assigns, and the Third Parties, through EPA. Amendments to this Conservation Easement must be in writing signed by all parties hereto, and must be consistent with the conservation purposes of this Easement. Grantor shall record any modification or termination of this Conservation Easement in the Land Records of the county or counties where the Conserved Area is located within sixty (60) days of executing such a modification or termination. Grantor shall provide Grantee and the Third Parties with proof of recordation within thirty (30) days of recording by the County Clerk. Grantor reserves unto itself the right to undertake de minimis modifications of the Conserved Area that are approved by Grantee. A "de minimis modification" is a modification that results in an increased level of protection of or does not affect the natural resources protected by this Conservation Easement within the Conserved Area.

10. RESERVED RIGHTS

A. The Grantor and any holders of easements or other property rights for the operation and maintenance of pre-existing or restoration project-related structures or infrastructure such as roads, utilities, drainage ditches, or stormwater facilities that are present on, over or under the Conservation Area(s) reserve the right, within the terms and conditions of their permits, their agreements, and the law, to continue with such operation and maintenance. All pre-existing or approved restoration project-related structures or infrastructure shall be shown on the accompanying plat map or approved plan and attached to this instrument.

B. If the restoration project requires any related or unanticipated infrastructure modifications, utility relocation, drainage ditches, or stormwater controls within the identified Conservation Area(s), or if situations require measures to remove threats to life or property within the identified Conservation Area(s), said activities must be approved in writing by the Third Parties and are subject to terms and conditions set forth in the

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written approval. Approval is subject to the Third Parties' discretion. If approved, said activities must be identified on amended Exhibits A and B and must be recorded and specifically noted as an "amendment" and copies of the recorded amended Exhibits must be provided to the Third Parties within 60 days of Third Party approval. Approval of said activity by the Third Parties is in addition to any Clean Water Act Section 404 permit, or other authorization, which may be required in order to legally implement said activity. The Grantor accepts the obligation to place any other responsible party on reasonable prior notice of their need to request such Third Party approval.

11. SEVERABILITY

If any portion of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

[THE FOLLOWING SECTION (12. CONSENT OF LENDER AND TRUSTEE) SHOULD BE INCLUDED ONLY WHEN APPLICABLE.]

12. RESTORATION

If the work required by a restoration plan, including maintenance or remedial work, occurs within the Conservation Area(s), then the Grantor is allowed to construct restoration work in accordance with the authorized restoration plan, a copy of which is incorporated by reference.

[IF GRANTOR HAS A MORTGAGE OR OTHER LEGAL ENCUMBRANCE ON THE PROPERTY, THE CONSERVATION EASEMENT MUST INCLUDE A COMPLETED VERSION OF THE FOLLOWING:]

13. CONSENT OF LENDER AND TRUSTEE

Grantor is the maker of a note dated _____ secured by a deed of trust dated _____ from the Grantor to _____ as trustees and either of whom may act, recorded in the Clerk's office in Deed Book _____ at page _____, for the benefit of _____ Bank (The "Deed of Trust"). _____, as trustees, join herein for the sole purpose of subordinating the lien, dignity and priority of the Deed of Trust to this Conservation Easement. _____ Bank joins herein for the sole purpose of consenting to the trustee's actions.]

IN WITNESS WHEREOF said GRANTOR has executed this Conservation Easement the day and year first above written.

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**[COMPANY OR GOVERNMENT
ENTITY NAME OF GRANTOR, IF
APPLICABLE]
(Please print)**

BY: _____
**[TITLE OF OFFICER OF GRANTOR
ENTITY, OR GRANTOR'S NAME, IF
AN
INDIVIDUAL] (Please print)**

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF [Click here to enter text.](#):

:

On [Click here to enter text.](#), before me, a Notary Public for the Commonwealth aforesaid,
personally appeared [Click here to enter text.](#), who acknowledged himself/herself to be

**[TITLE
OF OFFICER OF GRANTOR ENTITY, OR GRANTOR'S NAME, IF AN INDIVIDUAL],**
and that

s/he, as **[USE IF APPLICABLE: an officer of]** the Grantor, being authorized to do so,
executed, in my presence, the foregoing Conservation Easement for the purposes
herein contained

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public

Print name

My commission expires: _____

**[SEA
L]**

APPROVED AS TO LEGALITY AND FORM

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[ONE OR MORE SIGNATURE BLOCKS HERE FOR THE ATTORNEY FOR THE GRANTOR, AND IF A COMPANY OR GOVERNMENT ENTITY, ANY OTHER NECESSARY OFFICIALS.]

(Please legibly print names below signatures)

ACCEPTANCE BY HOLDER

I accept the rights and responsibilities of the Holder conferred by this Conservation Easement.

[NAME OF HOLDER OR HOLDER'S REPRESENTATIVE] (Please print)
[TITLE OF REPRESENTATIVE, IF APPLICABLE] (Please print)

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF [Click here to enter text.](#)

:

On [Click here to enter text.](#), before me, a Notary Public for the Commonwealth aforesaid, personally appeared [Click here to enter text.](#), who acknowledged himself/herself to be [Click here to enter text.](#), and that s/he, as ***[USE IF APPLICABLE: an officer of]*** the Grantor, being authorized to do so, executed, in my presence, the foregoing Conservation Easement for the purposes herein contained

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public

Print name

My commission expires: _____

[SEAL]

NOTE: Some version of the following notarization will accompany the complete,

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executed, and recorded instrument. The version below is simply one example. Other versions may be used to follow local legal recordation practice, including, for example, but not limited to, those referring only to a Deedbook Volume and Page, or only to a Liber and Folio.]

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF [Click here to enter text.](#)

:

Recorded in the Office for Recording of Deeds in and for aforesaid County, in
Deedbook [Click here to enter text.](#), Vol. [Click here to enter text.](#), Page [Click here to enter text.](#)

Witness my hand and seal of Office On [Click here to enter text.](#)

RECORDER OF DEEDS

GRANTOR

Print name

Print name

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Appendix C – Deed Restriction Sample

DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION

(hereinafter “Declaration”) is made this _____ day of _____, 20____, by **[NAME OF GRANTING LANDOWNER]** (hereinafter “Grantor”), with the United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (“USACE”) as Third-Party Beneficiaries with rights as provided in this Declaration, pursuant to Pennsylvania Statutes, Title 32, §§ 5051-5059 and Pennsylvania common law;

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of certain tracts of land located in _____ and being **[USE IF APPLICABLE: a portion of]** the property conveyed to the Grantor by deed recorded in deed book **[insert LIBER FOLIO reference here]** in the land records of _____ County, Pennsylvania, more particularly described in Exhibit(s) attached hereto and incorporated by reference, hereinafter referred to as the “Property”; and

*[**NOTE TO GRANTOR: The Grantor shall prepare and attach a legal description (i.e. metes and bounds) of the Property, and if less than the whole property, also include a separate, clearly identifiable, legal description of the Conservation Area(s), all in an exhibit to the Declaration identified as an Exhibit A and entitled “Conservation Area(s) Boundaries.” In addition, the Grantor will include an Exhibit B that shall be a scaled drawing of the area(s) subject to the Declaration, and entitled “Conservation Area(s) Boundary Map”. The restricted area(s) shall be clearly labeled on the plan(s) as “Conservation Area(s)” and be clearly identified by cross-hatching and/or shading/coloring. The Grantor shall also include, on the drawing, the location and extent of all known, pre-existing easements, rights of ways, utilities, drainage ditches, stormwater facilities, cattle crossings, and structures. For each such item that involves on-going or periodic operation and maintenance, a description of all anticipated and authorized maintenance work and the work boundaries for each item shall also be included on the exhibits and attachments, if necessary, and in Section 9. RESERVED RIGHTS. If legible and clearly depicted, the legal description(s) and drawing(s) can be included on one exhibit. If there is a permit associated with this declaration, a copy of the permit or verification must be attached to the document for recordation.]*

WHEREAS, the Grantor intends to make the portion of the Property hereinafter referred to as the “Conservation Area” subject to the conservation-based covenants described in this Declaration **[IF THERE IS A PERMIT ASSOCIATED WITH THIS DECLARATION: as a condition of the attached Department of the Army Permit or verification letter issued for the [INSERT PROJECT NAME USED FOR PERMIT APPLICATION HERE AND USACE PERMIT NUMBER IF AVAILABLE] project];** and

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WHEREAS, the Grantor agrees to the creation of these conservation-based covenants and intends the Conservation Area shall be preserved and maintained in a natural condition in perpetuity;

WHEREAS, preservation of the Conservation Area is consistent with a central objective of the Consent Decree in the matter of **[CASE NAME]**, Civil Action No. _____ (“CALLC CD”), Grantor agrees that the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE), and their successor agencies (collectively “Third Parties”), are third-party beneficiaries under this Declaration, except that nothing herein creates a property interest in the Federal Government or the Commonwealth of Pennsylvania with regard to the Conservation Area

NOW, THEREFORE, in consideration of the mutually-held interests in preservation of the environment, as well as the terms, conditions, and restrictions contained herein, and pursuant to Pennsylvania Statutes, Title 32, §§ 5051-5059 and the laws of the Commonwealth of Pennsylvania, Grantor does agree to the following terms and conditions:

1. PURPOSE

The purposes of this Declaration are:

A. To preserve and protect the native flora, fauna, soils, water table and drainage patterns, and other conservation values of the Conservation Area; to view the Conservation Area in its scenic and open condition; and in general, to assure that the Conservation Area, including its air space and subsurface, will be retained in perpetuity in its natural condition as provided herein and to prevent any use of the Conservation Area that will impair or interfere with its natural resource functions and values. Grantor intends that this Declaration will confine the use of the Conservation Area to such activities as are consistent with the purpose of this Declaration.

B. To allow the Grantor, the EPA, USACE, and Pennsylvania Department of Environmental Protection (PADEP) the right to enter upon the Property to inspect the Conservation Area(s) at reasonable times to monitor compliance with and otherwise enforce the terms of this Declaration when applicable; provided that, except in cases where Grantor determines that immediate entry is necessary to prevent, terminate, or mitigate a violation of this Declaration; such entry shall, when practicable, be upon reasonable prior notice to any successor or assign, and Grantor shall not unreasonably interfere with the successor’s or assign’s use and quiet enjoyment of the Property in accordance with the terms of this Declaration;

C. To allow the Grantor, EPA, and USACE to enforce the terms of this Declaration by appropriate legal proceedings in accordance with Pennsylvania Statutes, Title 32 §§ 5051-5059 and Pennsylvania common law, so as to prevent any activity on or use of the Property that is inconsistent with the purpose of this Declaration and to require the restoration of such areas or features of the Conservation Area that may be damaged by any inconsistent activity or use; and

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D. To allow the Grantor, or their authorized representatives, to enter upon the Property and its Conservation Area at reasonable times, upon prior notice to the property owner; and upon prior notice and written approval by the Third Parties, to take any appropriate environmental or conservation management measures consistent with the terms and purposes of this Declaration, including:

- 1) Planting of regionally native vegetation (i.e. trees, shrubs, grasses and forbs); or
- 2) Restoring, altering or maintaining: the topography; hydrology; drainage; structural integrity; streambed; water quantity; water quality; any relevant feature of any stream, wetland, water body, or vegetative buffer within the Conservation Area.

2. DURATION

This Declaration shall remain in effect in perpetuity, shall run with the land regardless of ownership or use, and is binding upon all subsequent declarants, their heirs, executors, administrators, successors, representatives, devisees, and assigns, as the case may be, as long as said party shall have any interest in any part of the Conservation Area. This Declaration is intended to survive foreclosure, bankruptcy, condemnation, or judgments affecting the Property.

3. PERMITTED USES

This Declaration will not prevent the Grantor; subsequent property owner(s); and the personal representatives, heirs, successors, and assigns of either the Grantor or subsequent property owner from making use of the area that is not expressly prohibited herein and are not inconsistent with the purpose of this Declaration.

4. RESTRICTIONS

Any activity in or use of the Conservation Area inconsistent with the purpose of the Declaration by the Grantor; subsequent property owner(s); and the personal representatives, heirs, successors, and assigns of either the Grantor or subsequent property owner, is prohibited. Without limiting the generality of the foregoing, and except (1) when an approved purpose under 1.D. above, (2) to the extent necessary to return the Conservation Area to a use consistent with its use prior to Chesapeake Appalachia, LLC's (CALLC's) initial entry onto the Conservation Area (and then only in compliance with any permits or authorizations that may be required), or (3) as necessary to accomplish restoration under a restoration plan approved by the Third Parties, the following activities and uses are expressly prohibited in, on, over, or under the Conservation Area, subject to all of the express terms and conditions below:

- A. **Structures.** The construction of man-made structures including but not limited to the construction, removal, placement, preservation, maintenance, alteration, or decoration of any buildings, roads, utility lines,

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billboards, or other advertising. This restriction does not include deer stands, bat boxes, bird nesting boxes, bird feeders, duck blinds, and the placement of signs for safety purposes or boundary demarcation;

- B. **Demolition.** The demolition of fencing structures constructed for the purpose of demarcation of the Conservation Area or for public safety;
 - C. **Soils.** The removal, excavation, disturbance, or dredging of soil, sand, peat, gravel, or aggregate material of any kind; or any change in the topography of the land, including any discharges of dredged or fill material, ditching, extraction, drilling, driving of piles, mining, or excavation of any kind;
 - D. **Drainage.** The drainage or disturbance of the water level or the water table, except for pre-existing or approved project-related stormwater discharges and any maintenance associated with those stormwater discharges. All pre-existing or approved project-related drainage/stormwater discharge features should be shown on the accompanying plat map or approved plan and attached to this Declaration; and identified in Section 9. RESERVED RIGHTS;
- Waste or Debris.** The storage, dumping, depositing, abandoning, discharging, or releasing of any gaseous, liquid, solid, or hazardous waste substance, yard waste, materials or debris of whatever nature on, in, over, or underground or into surface or ground water, except for pre-existing or approved project-related stormwater discharges and any maintenance associated with those stormwater discharges;
- E. **Non-Native Species.** The planting or introduction of non-native species;
 - F. **Herbicides, Insecticides and Pesticides.** The use of herbicides, insecticides, or pesticides, or other chemicals, except for as may be necessary to control invasive species that threaten the natural character of the Conservation Area. State-approved municipal application programs necessary to protect the public health and welfare are not included in this prohibition;
 - G. **Removal of Vegetation.** The mowing, cutting, pruning, or removal of vegetation any kind; disturbance, destruction, or the collection of any trees, shrubs, or other vegetation, except for pruning, cutting or removal for:
 - 1) safety purposes; or
 - 2) control in accordance with accepted scientific forestry management practices for diseased or dead vegetation; or
 - 3) control of non-native species and noxious weeds; or

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4) scientific or nature study;

- H. **Agricultural Activities.** Except to the extent necessary to return the Conservation Area to a use consistent with its use prior to CALLC's initial entry onto the Conservation Area (and then only in compliance with any permits or authorizations that may be required), conversion of, or expansion into, any portion of the Conservation Area for use of agriculture, horticulture, aquaculture, silviculture, livestock production or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g., from agriculture to silviculture).
[NOTE: THE FOLLOWING LANGUAGE SHOULD BE ADDED, AS APPROPRIATE FOR PROJECTS IN DESIGNATED BOG TURTLE COUNTIES: USACE-approved management practices, including the introduction of livestock, for the purpose of maintaining bog turtle habitat, are not included in this prohibition.];
- I. **Off-road Vehicles.** Recreational use of ATVs, dirt bikes, motorcycles, off-road vehicles, or motor vehicle of any kind is prohibited in the "Conservation Area".
- J. **Other:** Other acts, uses, excavation, or discharges which adversely affect fish or wildlife habitat or the preservation of lands, waterways, or other aquatic resources within the Conservation Area;

5. INSPECTION, ENFORCEMENT AND ACCESS RIGHTS

EPA, USACE, and PADEP, and their authorized representatives shall have the right to enter and go upon the Property, to inspect the Conservation Area and take actions necessary to verify compliance with this Declaration. When practicable, such entry shall be upon prior reasonable notice to the property owner. The Grantor grants to the EPA, USACE, and the U.S. Department of Justice a discretionary right to enforce this Declaration in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants: provided, however, that no violation of these restrictive covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. Nothing herein shall limit the right of USACE or PADEP to modify, suspend, or revoke any permit.

6. MONITORING AND MAINTENANCE

CALLC and its authorized agents shall have the right to enter and go upon the lands of the Grantor to monitor and manage the Conservation Area to ensure compliance with the approved restoration plan approved in connection with the CALLC CD. This may include, but is not limited to, completing annual monitoring, controlling invasive species,

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planting native vegetation, repairing signs/fences, and repairing erosion.

7. RECORDING AND EXECUTION BY PARTIES

The Grantor agrees to record this Declaration in the Land Records of the county or counties where the Property is located within sixty (60) days of the effective date of this Declaration. Grantor shall and provide the Third Parties with proof of recordation within thirty (30) days of recording.

8. NOTICE OF TRANSFER OF PROPERTY INTERESTS

No transfer of the rights of this Declaration, or of any other property interests pertaining to the Conservation Area or the underlying property it occupies shall occur without sixty (60) calendar days prior written notice to EPA, USACE, and PADEP.

9. MODIFICATIONS

Notwithstanding anything contained herein to the contrary, except for de minimis modifications (defined below), any modification or termination of this Declaration shall require the prior written approval of the Third Parties, through EPA. Amendments to this Declaration must be in writing, and must be consistent with the conservation purposes of this Declaration. Grantor shall record any modification or termination of this Declaration in the Land Records of the county or counties where the Conservation Area is located within sixty (60) days of executing such a modification or termination. Grantor shall provide the Third Parties with proof of recordation within thirty (30) days of recording by the County Clerk. Grantor reserves unto itself the right to undertake de minimis modifications of the Conservation Area. A “de minimis modification” is a modification that results in an increased level of protection of or does not affect the natural resources protected by this Declaration within the Conserved Area.

10. RESERVED RIGHTS

A. The Grantor and any holders of easements or other property rights for the operation and maintenance of pre-existing or project-related structures or infrastructure such as roads, utilities, drainage ditches, or stormwater facilities that are present on, over or under the Conservation Area reserve the right, within the terms and conditions of their permits, their agreements, and the law, to continue with such operation and maintenance. All pre-existing or approved project-related structures or infrastructure shall be shown on the accompanying plat map or approved plan and attached to this instrument.

B. If the authorized project requires any related or unanticipated infrastructure modifications, utility relocation, drainage ditches, or stormwater controls within the identified Conservation Area, or if situations require measures to remove threats to life or property within the identified Conservation Area, said activities must be approved in writing by the Third Parties and are subject to terms and conditions set forth in the

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written approval. Approval is subject to the Third Parties' discretion. If approved, said activities must be identified on amended Exhibits A and B and must be recorded and specifically noted as an "amendment" and copies of the recorded amended Exhibits must be provided to the Third Parties within 60 days of Third Party approval. Approval of said activity by the Third Parties is in addition to any Clean Water Act, Section 404 permit, or other authorization, which may be required in order to legally implement said activity. The Grantor accepts the obligation to place any other responsible party on reasonable prior notice of their need to request such approval.

11. SEVERABILITY

If any portion of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

[THE FOLLOWING TWO SECTION (12. CONSENT OF LENDER AND TRUSTEE) SHOULD BE INCLUDED ONLY WHEN APPLICABLE.]

12. RESTORATION

If the work required by a restoration plan, including maintenance or remedial work, under the Department of Army permit for the authorized project occurs within the Conservation Area, then the Grantor is allowed to construct the restoration work in accordance with the authorized restoration plan, a copy of which is incorporated by reference.

[IF GRANTOR HAS A MORTGAGE OR OTHER LEGAL ENCUMBRANCE ON THE PROPERTY, THE DECLARATION MUST INCLUDE A COMPLETED VERSION OF THE FOLLOWING:]

13. CONSENT OF LENDER AND TRUSTEE

Grantor is the maker of a note dated _____ secured by a deed of trust dated _____ from the Grantor to _____ as trustees and either of whom may act, recorded in the Clerk's office in Deed Book _____ at page _____, for the benefit of _____ Bank (The "Deed of Trust.").

_____, as trustees, join herein for the sole purpose of subordinating the lien, dignity and priority of the Deed of Trust to this Declaration.

_____ Bank joins herein for the sole purpose of consenting to the trustee's actions.

IN WITNESS WHEREOF said GRANTOR has executed this Declaration the day and year first above written.

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**[COMPANY OR GOVERNMENT
ENTITY NAME OF GRANTOR, IF
APPLICABLE]**
(Please print)

BY: _____
**[TITLE OF OFFICER OF GRANTOR
ENTITY, OR GRANTOR'S NAME, IF
AN
INDIVIDUAL] (Please print)**

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF [Click here to enter text.](#):

:

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On [Click here to enter text.](#), before me, a Notary Public for the Commonwealth aforesaid, personally appeared [Click here to enter text.](#), who acknowledged himself/herself to be **[TITLE OF OFFICER OF GRANTOR ENTITY, OR GRANTOR'S NAME, IF AN INDIVIDUAL]**, and that s/he, as **[USE IF APPLICABLE: an officer of]** the Grantor, being authorized to do so, executed, in my presence, the foregoing Declaration for the purposes herein contained

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public

Print name

My commission expires: _____

[SEAL]

APPROVED AS TO LEGALITY AND FORM

[ONE OR MORE SIGNATURE BLOCKS HERE FOR THE ATTORNEY FOR THE GRANTOR, AND IF A COMPANY OR GOVERNMENT ENTITY, ANY OTHER NECESSARY OFFICIALS.]

(Please legibly print names below signatures)

NOTE: Some version of the following notarization will accompany the complete, executed, and recorded instrument. The version below is simply one example. Other versions may be used to follow local legal recordation practice, including, for example, but not limited to, those referring only to a Deedbook Volume and Page, or only to a Liber and Folio.]

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF [Click here to enter text.](#)

:

Recorded in the Office for Recording of
Deeds in and for aforesaid County, in
Deedbook [Click here to enter text.](#), Vol. [Click here to enter text.](#),
Page [Click here to enter text.](#)

Witness my hand and seal of
Office On _____

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RECORDER OF DEEDS

GRANTOR

Print name
name

Print